IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 256 OF 2007
IN
CRIMINAL APPEAL NO. 88 OF 2007

Rajkumar Sheetalprasad Kaknani ..Applicant
V/s
N.C.B. and another ..Respondent.

Mr. Ramrao Adik, Sr. Counsel with Mr. Anil Lala and Mr. Baraskar Advocates i/b Lalla and Lalla for the applicant.
Mrs. P.H. Kantharia, Special P. P. for the respondent No.1.
Mrs. M.H. Mhatre, APP for the State.

CORAM : J.H. BHATIA, J.
DATE : 11TH APRIL, 2007.

P.C.

. Heard Mr. Ramrao Adik, Learned Sr. Counsel for the applicant and Mrs. Kantharia, learned Special Public Prosecutor for the N.C.B./respondent No.1.

2. The applicant, who is the original accused No.1, and accused No.2 Zakir Husain were convicted for the offence punishable under Section 29 r/w section 21 of N.D.P.S. Act and were sentenced to undergo R.I. for ten years and fine of Rs. 1,00,000/- in default to pay fine of Rs.. 1,00,000/- to undergo S.I. for six months. The applicant has preferred an appeal challenging the conviction and sentence. The appeal is

admitted. By his application, he seeks to be released on bail, pending final hearing and disposal of the appeal.

3. The prosecution case, in brief, is that the intelligence was received by the officers of the Intelligence, Narcotic Control Bureau, Mumbai that the present applicant had negotiated with accused No.2 Zakir and accused No.3 Usman for procuring around 20-30 Kgs. of heroin for the price in the range of Rs. 1,33,000/- per Kg. For this purpose, the present applicant was to send Rs.15,00,000/- through one Babloo in a fiat car to accused Nos.2 and 3, as a part payment and as per the information the fiat car was to leave in the night of 6th July, 2002. The said car was to reach the particular point on 7/7/2002 at about 7 A.M. one Raju was to join accused Nos. 2 and 3 and they would go to Mandsaur in the fiat car. After getting the information, the Intelligence Officers arranged a trap and they found the said car on High Way Hotel near a petrol pump at 10 A.M. They noticed a Maruti Car, as well as fiat car as per the information. Accused Nos. 2 and 3 were arrested . The amount of Rs. 15 lakh was found hidden in the dicky of fiat car. Later on the

Intelligence officer recorded statements of those persons and others who made the confession statements.

4. The whole case of the prosecution is thus barred on Intelligence received and the confessional statements of some of the accused persons recorded under section 67 of N.D.P.S. Act. No heroin or any drug was recovered or seized from anybody. The recovery was only of amount of Rs. 15 lakh. Mrs. Kantharia, learned Special Public Prosecutor, contended that the statement recorded under section 67 of Intelligence officer is admissible in evidence and relying on certain authorities, she contended that the conviction can be based on the confessional statement alone. However, in the cases she has referred the contraband drug was actually recovered and besides that there were confessional statements under section 67 of N.D.P.S. Act. In **M.Prabhulal V. Assistant Director , Director of Revenue Intelligence, (2003) 8 S.C.C. 449**, 66.1 Kgs. Hashish was recovered from three accused persons and thereafter the confessional statements were also recorded. It was held that the confessional statement is admissible in evidence. In **R.N. Kaker V. Shabir Fidahusein and another, 1990 CRI. L.J. 144.** It **was held** that the

statement under Section 67 NDPS Act recorded by Revenue Intelligence Officer is admissible and is not hit by section 25 of Evidence Act. However, in that case also, 1 Kg. of brown sugar i.e. Heroin was actually recovered. However, in the present case, no Heroin and drug was recovered by the Intelligence Authorities. The whole case is based only on recovery of amount of Rs.15 Lakh and some confessional statements. The accused persons are in jail since July, 2002. and final hearing of appeal itself may take some more years, taking into consideration the heavy pendency. In view of the circumstances, I find that the bail may be granted to the applicant pending final hearing and disposal of the appeal with certain conditions.

5. Pending hearing and disposal of the appeal the applicant is granted bail in the sum of Rs. 1 lakh with one solvent surety in like amount with conditions that he shall deposit fine amount and shall also report at the office of Intelligence Officer, N.C.B., Mumbai on 1st and 15th day of every month till disposal of the appeal. He shall not misuses the bail.

(J.H. BHATIA, J.)